

Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation and Petition to Revoke Probation
Against:

MARK CHRISTOPHER DOWLING, M.D.,

Physician and Surgeon Certificate
No. G80355

Respondent.

OAH No. 2018060047

Case No. 800-2018-040659

PROPOSED DECISION

This matter was heard before Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 25, 2018, in Sacramento, California.

Vladimir Shalkevich, Deputy Attorney General, represented Kimberly Kirchmeyer (complainant), Executive Director, Medical Board of California (Board), Department of Consumer Affairs.

No appearance was made by or on behalf of Mark Dowling, M.D. (respondent). At hearing, the Board established that respondent was properly served with, among other things, the Accusation, the First Amended Accusation, and the Notice of Hearing. This matter therefore proceeded as a default against respondent under Government Code section 11520.

Evidence was heard, the record was closed, and the matter was submitted for decision on June 25, 2018.

FACTUAL FINDINGS

1. On December 7, 1994, the Board issued Physician and Surgeon Certificate License No. G80355 to respondent. The license was in full force and effect at all times relevant. Respondent's license will expire on August 31, 2018, unless renewed or revoked.

License History

2. On October 10, 2014, an Ex-Parte Interim Suspension Order (ISO) Hearing was held and an ISO was issued, pursuant to Government Code section 11529, prohibiting respondent from practicing medicine until an Accusation was issued and a hearing was conducted on the same. The ISO ordered respondent to enroll in an outpatient alcohol rehabilitation program, attend ongoing psychiatric treatment and counseling, and complete a neurological and a psychiatric assessment and medication review.

3. On November 7, 2014, complainant, in her official capacity, made and served an Accusation, seeking discipline against respondent's license. Specifically, complainant alleged that respondent suffered from a mental or physical condition affecting his ability to practice medicine safely because of his use of medications and/or alcohol in a manner dangerous to himself or others following two driving under the influence (DUI) arrests, with one conviction, and the other matter pending in criminal court.

4. On February 11, 2015, respondent signed a Stipulated Settlement and Disciplinary Order (Disciplinary Order), admitting the allegations and agreeing to having his license be placed on probation for five years, with the following terms and conditions: 1 – ongoing compliance with the ISO, 2 – Abstain from Alcohol; 3 – Biological Testing; 4 – Ethics Course; 5 – Psychiatric Evaluation; 6 – Psychotherapy; 7 – Medical Evaluation and Treatment; 8 – Practice Monitor; 9 – Notification; 10 – No Supervision of Physician's Assistants; 11 – Obey All Laws; 12 – Quarterly Declarations; 13 – General Probation Requirements; 14 – Interview with Board or Its Designee; 15 – Non-Practice While on Probation; 16 – Completion of Probation; 17 – Violation of Probation; 18 – License Surrender; and 19 – Probation Monitoring Costs. On April 10, 2015, the Board adopted the Disciplinary Order, effective May 8, 2015. Respondent's probation is scheduled to end on May 8, 2020.

Accusation and Petition to Revoke Probation

5. On April 25, 2018, complainant, in her official capacity, made and served an Accusation and Petition to Revoke Probation (Accusation and Petition), seeking revocation of respondent's license. Specifically, complainant alleges that respondent used a controlled substance, cocaine, and violated Probation Condition 11 – Obey All Laws, which states:

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

6. On May 9, 2018, respondent filed a Notice of Defense to the Accusation and Petition. The same day, a Noticed ISO Hearing was held seeking to prohibit respondent from practicing medicine because of his alleged drug use.

7. On May 23, 2018, an ISO was issued, pursuant to Government Code section 11529, prohibiting respondent from practicing medicine until an Accusation was issued and a hearing was conducted on the same. On June 12, 2018, complainant, in her official capacity, made and served a First Amended Accusation and Petition to Revoke Probation, adding that an ISO issued on May 23, 2018.

Use of Controlled Substance

8. On April 29, 2015, Virginia Gérard, Board Probation Analyst, sent respondent a letter advising him to enroll and participate in FirstLab; complete daily check-ins on the FirstLab system; and submit to biological fluid tests at FirstLab when required. On May 6, 2015, respondent received a copy of the Disciplinary Order. On May 6, 2015, respondent signed and submitted to the Board an Acknowledgement of Decision, verifying he received a copy of the Disciplinary Order and that Board Inspector Carole Davis had explained all of the terms and conditions of his probation to him and addressed any questions respondent had about the conditions of probation.

9. On July 6, 2015, complainant issued a Citation to respondent, alleging he had violated Probation Condition 3 – Biological Testing, by repeatedly failing to complete daily check-ins with FirstLab. Respondent was assessed a \$350 administrative fine. Respondent paid the fine.

10. On January 22, 2018, respondent was selected for a random biological fluids test by FirstLab. Respondent provided a urine sample. The sample was split. FirstLab forwarded samples A and B to Clinical Reference Laboratory (CRL). CRL tested sample A and found it positive for cocaine metabolite (> 300 ng/mL). On January 26, 2018, FirstLab notified the Board of the CRL test results. On January 30, 2018, FirstLab directed CRL to forward sample B to Quest Diagnostics Laboratory (Quest); CRL complied.

11. On January 29, 2018, the Board was notified of the CRL test results, finding respondent's sample positive for cocaine. The same day, the Board sent respondent an email requesting an explanation for his cocaine positive test results. The Board also contacted James Ferguson, M.D., a Board Medical Review Officer, and asked him to review respondent's cocaine positive test results. On January 30, 2018, Dr. Ferguson opined that the test results are consistent with some form of cocaine ingestion. On January 31, 2018, respondent responded to the Board: "I am not sure what the source of the test results was from. As best I can tell it was something I ate or drank."

12. On February 1, 2018, Quest tested sample B and found it positive for cocaine metabolites. On February 5, 2018, the Board was notified that respondent's split sample tested positive for cocaine. The Board contacted Dr. Ferguson with the Quest results. Dr. Ferguson opined: "none of [Dr. Dowling's] listed medications would cause a confirmed positive for the cocaine metabolite. There are no naturally occurring foods other than coca mate tea from South America that cause cocaine positives either."

Evidence at Hearing

13. The Board offered the following exhibits:

- a. An affidavit from David Kutz, Executive Director of Analytical Toxicology and Co-Laboratory Director for the Workplace Drug Testing Division of CRL, verifying the testing protocols and results, and authenticating the CRL test documentation for respondent's sample.
- b. An affidavit from Susan Mills, Operations Director for Quest, verifying the testing protocols and results, and authenticating the Quest test documentation for respondent's split sample.
- c. The transcript of the May 9, 2018 ISO hearing, wherein respondent alleges he drank an herbal tea, causing him to test positive for cocaine; similar to when he tested positive for opiates after eating a poppy seed bagel.
- d. Court documents from the Tuolumne County Superior Court, in Case Nos. CRM 40088, including a November 20, 2012 California Highway Patrol Citation for violation of Vehicle Code 23152, subdivision (a) (DUI); the December 14, 2012 criminal complaint; the April 1, 2016 jury verdict for two violations of Vehicle Code section 23152, subdivision (a); minute order sentencing respondent to 25 days home monitoring, three years of probation, 250 hours of community service, and fines and fees (\$2,130).
- e. A list of respondent's prescription medications, including: Escitalopram, Bupropion, Proair HFR (inhaler), Amoxicillin/K Clav 875/125 mg, and Promethazine/Codeine 625-10 mg/5 mg.

14. The Board offered the testimony of Dr. Ferguson, who confirmed respondent had to have ingested cocaine, by coca mate tea or otherwise, given the test results.

15. Respondent failed to appear at hearing or offer any evidence.

Discussion

16. Cocaine is a Schedule II controlled substance in California. (Health & Saf. Code § 11055.) It is illegal to possess cocaine without a prescription. (Health & Saf. Code § 11350.) Respondent tested positive for cocaine; CRL tested sample A and found cocaine metabolites (> 300 ng/mL) and Quest tested sample B and found cocaine metabolites. Dr. Ferguson credibly testified that respondent had to have ingested cocaine, by coca mate tea or otherwise, given the test results.

17. Given the above, respondent also violated probationary Condition 11, by testing positive for an illegal substance. Effective May 8, 2015, respondent became subject to probationary terms and conditions detailed in the Disciplinary Order, including Condition 11. On May 6, 2015, respondent signed an Acknowledgement, indicating his understanding of the terms and conditions required of him to practice medicine in California. As such, respondent's license was under heightened scrutiny for the term of probation, and he knew it. Respondent is an educated and licensed professional. His choice to consume cocaine, in whatever form, is wholly inconsistent with his obligations as a license holder and probationer.

18. Moreover, respondent has a significant history of substance abuse, including two DUI convictions. Given all of the evidence, at this time, the Board has no confidence that respondent can safely practice medicine.

LEGAL CONCLUSIONS

Accusation

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. Business and Professions Code section 2239 prohibits the "use or prescribing for or administering to himself or herself, of any controlled substance."

3. Based upon the Factual Findings as a whole, cause exists to discipline respondent's license, under Business and Professions Code sections 2239; in that respondent consumed cocaine, a controlled substance.

Petition to Revoke Probation

4. Effective May 8, 2015, respondent became subject to probationary terms and conditions detailed in the Disciplinary Order, including Condition 11, which states:

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

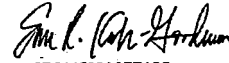
5. Based on the matters set forth in the Factual Findings as a whole, respondent violated the Board's Decision and Order, Condition 11 – Obey All Laws, when he consumed cocaine.

6. Given the above, respondent is not safe to practice medicine in California at this time. Therefore, his license must be revoked.

ORDER

Physician's and Surgeon's Certificate No. G80355 issued to respondent Mark Christopher Dowling, M.D. is REVOKED.

Dated: July 24, 2018

DocuSigned by:

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ERIN R. KOCH-GOODMAN
Administrative Law Judge
Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 12 20 18
BY W. C. H. ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

Case No. 800-2018-040659

12 MARK CHRISTOPHER DOWLING, M.D.

FIRST AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION

13 420 West Acacia Street, Suite 10
14 Stockton, California 95203

15 Physician's and Surgeon's Certificate
16 No. G 80355,

17 Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation and
21 Petition to Revoke Probation solely in her official capacity as the Executive Director of the
22 Medical Board of California ("Board").

23 2. On December 7, 1994, the Board issued physician's and surgeon's certificate number
24 G80355 (the "license") to Respondent. On May 8, 2015, the Board's Decision in case number
25 02-2012-228401 became effective. The Decision revoked Respondent's license, but stayed the
26 revocation and placed Respondent on five years of probation with various terms and conditions,
27 which included a requirement to "obey all laws," and a provision for random, unannounced,
28 observed bodily fluid testing. A copy of the Decision in the Board case number 02-2012-228401

1 is attached hereto as Exhibit A, and is incorporated herein by reference. On May 23, 2018, a
2 Decision and Order on Petition for Interim Suspension Order was issued in the Board's case
3 number 800-2018-040659, whereby Respondent was suspended from the practice of medicine. A
4 true copy of the Decision and Order on Petition for Interim Suspension Order in the Board's case
5 number 800-2018-040659 is attached hereto as Exhibit B and is incorporated herein by reference.
6 At all times relevant to this proceeding, Respondent's license was valid and subject to
7 probationary terms and conditions. The license will expire, unless renewed, on August 31, 2018.

8 JURISDICTION

9 3. This Accusation and Petition to Revoke Probation is brought before the Board under
10 the authority of the following laws. All section references are to the Business and Professions
11 Code unless otherwise indicated.

12 4. Section 2227 of the Code states:

13 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
14 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
15 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
16 action with the board, may, in accordance with the provisions of this chapter:

17 "(1) Have his or her license revoked upon order of the board.

18 "(2) Have his or her right to practice suspended for a period not to exceed one year upon
19 order of the board.

20 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
21 order of the board.

22 "(4) Be publicly reprimanded by the board. The public reprimand may include a
23 requirement that the licensee complete relevant educational courses approved by the board.

24 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
25 the board or an administrative law judge may deem proper.

26 "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
27 review or advisory conferences, professional competency examinations, continuing education
28 activities, and cost reimbursement associated therewith that are agreed to with the board and

1 successfully completed by the licensee, or other matters made confidential or privileged by
2 existing law, is deemed public, and shall be made available to the public by the board pursuant to
3 Section 803.1."

4 5. On or about May 8, 2015, the Board's Decision, entitled *In the Matter of the*
5 *Accusation against Mark Christopher Dowling, M.D.*, Medical Board case number 02-2012-
6 228401, became effective. The Decision revoked Respondent's license, but stayed the revocation
7 and placed Respondent on five years probation with various terms and conditions. At all relevant
8 times, Respondent's probation Condition 11 provided: "Respondent shall obey all federal, state
9 and local laws, all rules governing the practice of medicine in California and remain in full
10 compliance with any court ordered criminal probation, payments, and other orders."

11 6. Health and Safety Code section 11055, subdivisions (b) (4) and (6), provides that
12 cocaine and coca leaves and any salt, compound, derivative, or preparation of coca leaves, is a
13 Schedule II controlled substance.

14 7. Section 2239 of the Code states:

15 "(a) The use or prescribing for or administering to himself or herself, of any controlled
16 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
17 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
18 any other person or to the public, or to the extent that such use impairs the ability of the licensee
19 to practice medicine safely or more than one misdemeanor or any felony involving the use,
20 consumption, or self-administration of any of the substances referred to in this section, or any
21 combination thereof, constitutes unprofessional conduct. The record of the conviction is
22 conclusive evidence of such unprofessional conduct.

23 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
24 deemed to be a conviction within the meaning of this section. The Medical Board may order
25 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
26 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
27 affirmed on appeal or when an order granting probation is made suspending imposition of
28 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal

1 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
2 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
3 indictment."

4 **CAUSE FOR DISCIPLINE**

5 (Use of a Controlled Substance)

6 8. Respondent Mark Christopher Dowling, M.D. is subject to disciplinary action under
7 section 2239 in that he used a controlled substance, cocaine, in violation of section 2239. The
8 circumstances are as follows:

9 9. On or about January 22, 2018, pursuant to the provisions of his probation,
10 Respondent was selected to provide a random, observed, split urine sample pursuant to Condition
11 3 of his probation. Respondent provided a urine sample which was forwarded to the Clinical
12 Reference Laboratory. Respondent's urine sample was tested, and the result was positive for
13 cocaine metabolite, beyond the cut-off value of 300 ng/mL. The sample was subjected to
14 confirmatory testing, which returned a positive result for cocaine metabolite beyond 150 ng/mL.
15 The split sample was forwarded to Quest Diagnostics Laboratory for reconfirmation testing. A
16 positive test result showing that Respondent's urine contained metabolite of cocaine was
17 reconfirmed.

18 **CAUSE TO REVOKE PROBATION**

19 (Violation of Probationary Condition)

20 10. The probation of Respondent Mark Christopher Dowling, M.D. is subject to
21 revocation for violation of condition 11 of his probation, because he violated Code section 2239
22 by using a controlled substance, namely cocaine, in violation of section 2239. The circumstances
23 are as follows:

24 11. The allegations of paragraph 9 above, are incorporated herein by reference.

25 **DISCIPLINARY CONSIDERATIONS**

26 12. To determine the degree of discipline, if any, to be imposed Complainant alleges that
27 effective May 8, 2015, the Board issued a Decision in Board case number 02-2012-228401,
28 which revoked Respondent's license, stayed the revocation, and placed Respondent on a five-

1 year period of probation. A copy of that Decision is attached hereto as Exhibit A, and is
2 incorporated herein by reference. Among other provisions, the Decision contains Condition 3,
3 which requires Respondent to submit to random, unannounced, observed biological fluid testing.
4 The testing is accomplished by Respondent's daily check-in in with the contracted biological
5 fluid collection location, by telephone or by a computer application, to find out whether he is
6 selected to provide a sample. If Respondent is selected to provide a sample, he would have to
7 travel to the location to provide a biological fluid sample. On July 5, 2016, Respondent was
8 issued a Citation Order number 800-2016-023995, for violation of Condition 3 of his probation
9 by missing several system check-ins. Respondent was fined \$350 and ordered to maintain
10 compliance with his biological fluid testing condition. Respondent paid that citation.

11 13. To further determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges that on or about April 1, 2016, in the Superior Court of California, County of
13 Tuolumne, in a case entitled *People v. Dowling*, case number CRM 40088, Respondent was
14 convicted by jury verdict of violation of Vehicle Code section 23153, subdivision (a), driving
15 under the influence of alcohol.

16 14. To further determine the degree of discipline, if any, to be imposed, Complainant
17 alleges that on October 25, 2010, in the Monterey County Superior Court case number
18 MS286915A, Respondent was convicted, pursuant to a plea of no contest, of a violation of
19 Vehicle Code section 23103.5, alcohol-related reckless driving.

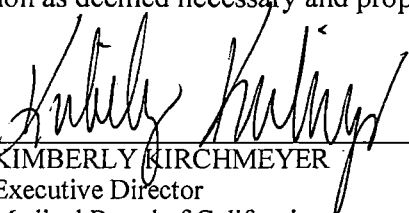
20 **PRAYER**

21 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Medical Board of California issue a decision:

- 23 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 80355,
24 issued to Mark Christopher Dowling, M.D.;
- 25 2. Revoking the probation and imposing discipline that was stayed in Case No. 02-2012-
26 228401, namely the revocation of his Physician's and Surgeon's Certificate;
- 27 3. Revoking, suspending or denying approval of his authority to supervise physician
28 assistants and advanced practice nurses;

- 1 4. If placed on probation, ordering him to pay the Board the costs of probation
2 monitoring; and
3 5. Taking such other and further action as deemed necessary and proper.

4
5 DATED: June 12, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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Exhibit A

Decision in Medical Board case number 02-2012-228401

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)
)
)
)

MARK CHRISTOPHER DOWLING, M.D.)

Case No. 02-2012-228401

Physician's and Surgeon's
Certificate No. G80355)
)
)

Respondent)
_____)

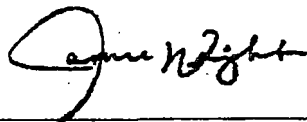
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 8, 2015.

IT IS SO ORDERED: April 10, 2015.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, J.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2148
Facsimile: (213) 897-9395
7 Attorneys for Complainant

8 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation Against:

Case No. 02-2012-228401

12 MARK CHRISTOPHER DOWLING, M.D.
1000 Greenley Rd.
13 Sonora, CA 95370

OAH No. 2014120028

14 STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Physician's and Surgeon's Certificate No.
G80355

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:
19

20 PARTIES

21 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
Board of California. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Vladimir
23 Shalkevich, Deputy Attorney General.

24 2. Respondent MARK CHRISTOPHER DOWLING, M.D. ("Respondent") is
25 represented in this proceeding by attorney Dominique A. Pollara, Esq., whose address is 3600
26 American River Drive Suite 160, Sacramento, CA 95864.
27
28

3. On or about December 7, 1994, the Medical Board of California issued Physician's and Surgeon's Certificate No. G80355 to MARK CHRISTOPHER DOWLING, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 02-2012-228401 and will expire on August 31, 2016, unless renewed.

JURISDICTION

4. An Interim Order By Administrative Law Judge Pursuant to Petition For Interim Suspension Order in the Case No. 02-2012-228401 was issued on or about October 10, 2014.

5. Accusation No. 02-2012-228401 was subsequently filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 7, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 02-2012-228401, which includes a copy of the Interim Order By Administrative Law Judge Pursuant to Petition For Interim Suspension Order in the Case No. 02-2012-228401, is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 02-2012-228401. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent understands and agrees that the charges and allegations in Accusation No. 02-2012-228401, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

11. For the purpose of resolving the Accusation, without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 02-2012-228401 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

13. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

14. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

15. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the

1 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
2 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
3 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
4 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
5 action between the parties, and the Board shall not be disqualified from further action by having
6 considered this matter.

7 16. The parties understand and agree that Portable Document Format (PDF) and facsimile
8 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
9 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

10 17. In consideration of the foregoing admissions and stipulations, the parties agree that
11 the Board may, without further notice or formal proceeding, issue and enter the following
12 Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G80355 issued
15 to Respondent MARK CHRISTOPHER DOWLING, M.D. (Respondent) is revoked. However,
16 the revocation is stayed and Respondent is placed on probation for five (5) years on the following
17 terms and conditions.

18 1. ONGOING COMPLIANCE WITH INTERIM ORDER BY ADMINISTRATIVE
19 LAW JUDGE. In addition to the conditions of probation enumerated below, Respondent shall
20 comply with conditions A through E of the INTERIM ORDER BY ADMINISTRATIVE LAW
21 JUDGE PURSUANT TO PETITION FOR INTERIM SUSPENSION ORDER in the Case No.
22 02-2012-228401, issued on October 10, 2014, which is a part of Exhibit A attached hereto and
23 which is incorporated herein by reference.

24 2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
25 use of products or beverages containing alcohol.

26 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
27 receive a notification from the Board or its designee to immediately cease the practice of
28 medicine. The Respondent shall not resume the practice of medicine until final decision on an

1 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
2 probation shall be filed by the Board within 15 days of the notification to cease practice. If the
3 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
4 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent
5 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or
6 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
7 shall not apply to the reduction of the probationary time period.

8 If the Board does not file an accusation or petition to revoke probation within 15 days of the
9 issuance of the notification to cease practice or does not provide Respondent with a hearing
10 within 30 days of a such a request, the notification of cease practice shall be dissolved.

11 3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
12 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
13 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
14 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
15 practicing medicine, Respondent shall contract with a laboratory or service approved in advance
16 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
17 testing. The contract shall require results of the tests to be transmitted by the laboratory or
18 service directly to the Board or its designee within four hours of the results becoming available.
19 Respondent shall maintain this laboratory or service contract during the period of probation.

20 A certified copy of any laboratory test result may be received in evidence in any
21 proceedings between the Board and Respondent.

22 If Respondent fails to cooperate in a random biological fluid testing program within the
23 specified time frame, Respondent shall receive a notification from the Board or its designee to
24 immediately cease the practice of medicine. The Respondent shall not resume the practice of
25 medicine until final decision on an accusation and/or a petition to revoke probation. An
26 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the
27 notification to cease practice. If the Respondent requests a hearing on the accusation and/or
28 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30

1 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be
2 received from the Administrative Law Judge or the Board within 15 days unless good cause can
3 be shown for the delay. The cessation of practice shall not apply to the reduction of the
4 probationary time period.

5 If the Board does not file an accusation or petition to revoke probation within 15 days of the
6 issuance of the notification to cease practice or does not provide Respondent with a hearing
7 within 30 days of a such a request, the notification of cease practice shall be dissolved.

8 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
9 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
10 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358,
11 Respondent shall participate in and successfully complete that program. Respondent shall
12 provide any information and documents that the program may deem pertinent. Respondent shall
13 successfully complete the classroom component of the program not later than six (6) months after
14 Respondent's initial enrollment, and the longitudinal component of the program not later than the
15 time specified by the program, but no later than one (1) year after attending the classroom
16 component. The professionalism program shall be at Respondent's expense and shall be in
17 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

18 A professionalism program taken after the acts that gave rise to the charges in the
19 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
20 or its designee, be accepted towards the fulfillment of this condition if the program would have
21 been approved by the Board or its designee had the program been taken after the effective date of
22 this Decision.

23 Respondent shall submit a certification of successful completion to the Board or its
24 designee not later than 15 calendar days after successfully completing the program or not later
25 than 15 calendar days after the effective date of the Decision, whichever is later.

26 5. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of
27 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
28 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological

1 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
2 consider any information provided by the Board or designee and any other information the
3 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
4 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
5 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
6 psychiatric evaluations and psychological testing.

7 Respondent shall comply with all restrictions or conditions recommended by the evaluating
8 psychiatrist within 15 calendar days after being notified by the Board or its designee.

9 6. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
10 Respondent shall submit to the Board or its designee for prior approval the name and
11 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
12 has a doctoral degree in psychology and at least five years of postgraduate experience in the
13 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
14 undergo and continue psychotherapy treatment, including any modifications to the frequency of
15 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

16 The psychotherapist shall consider any information provided by the Board or its designee
17 and any other information the psychotherapist deems relevant and shall furnish a written
18 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
19 psychotherapist any information and documents that the psychotherapist may deem pertinent.

20 Respondent shall have the treating psychotherapist submit quarterly status reports to the
21 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
22 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
23 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
24 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
25 period of probation shall be extended until the Board determines that Respondent is mentally fit
26 to resume the practice of medicine without restrictions.

27 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

28 7. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the

1 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
2 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
3 who shall consider any information provided by the Board or designee and any other information
4 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
5 designee. Respondent shall provide the evaluating physician any information and documentation
6 that the evaluating physician may deem pertinent.

7 Following the evaluation, Respondent shall comply with all restrictions or conditions
8 recommended by the evaluating physician within 15 calendar days after being notified by the
9 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
10 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
11 Board or its designee for prior approval the name and qualifications of a California licensed
12 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
13 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
14 further notice from the Board or its designee.

15 The treating physician shall consider any information provided by the Board or its designee
16 or any other information the treating physician may deem pertinent prior to commencement of
17 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
18 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
19 Respondent shall provide the Board or its designee with any and all medical records pertaining to
20 treatment, the Board or its designee deems necessary.

21 If, prior to the completion of probation, Respondent is found to be physically incapable of
22 resuming the practice of medicine without restrictions, the Board shall retain continuing
23 jurisdiction over Respondent's license and the period of probation shall be extended until the
24 Board determines that Respondent is physically capable of resuming the practice of medicine
25 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

26 8. MONITORING - PRACTICE. Respondent is not currently engaged in the practice of
27 medicine. Installment of a practice monitor as ordered herein shall be a condition precedent to
28 Respondent's return to practice of medicine. Prior to engaging in the practice of medicine.

1 Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s),
2 the name and qualifications of one or more licensed physicians and surgeons whose licenses are
3 valid and in good standing, and who are preferably American Board of Medical Specialties
4 (ABMS) certified. A monitor shall have no prior or current business or personal relationship with
5 Respondent, or other relationship that could reasonably be expected to compromise the ability of
6 the monitor to render fair and unbiased reports to the Board, including but not limited to any form
7 of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's
8 monitor. Respondent shall pay all monitoring costs.

9 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
10 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
11 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
12 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
13 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
14 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
15 signed statement for approval by the Board or its designee.

16 On the date of Respondent's return to the practice of medicine, and continuing throughout
17 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
18 make all records available for immediate inspection and copying on the premises by the monitor
19 at all times during business hours and shall retain the records for the entire term of probation.
20 Respondent shall not practice medicine until a monitor is approved to provide monitoring
21 responsibility.

22 The monitor(s) shall submit a quarterly written report to the Board or its designee which
23 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
24 are within the standards of practice of medicine and whether Respondent is practicing medicine
25 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
26 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
27 preceding quarter.

28 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of

1 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
2 name and qualifications of a replacement monitor who will be assuming that responsibility within
3 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
4 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
5 notification from the Board or its designee to cease the practice of medicine within three (3)
6 calendar days after being so notified Respondent shall cease the practice of medicine until a
7 replacement monitor is approved and assumes monitoring responsibility.

8 9. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
9 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
10 Chief Executive Officer at every hospital where privileges or membership are extended to
11 Respondent, at any other facility where Respondent engages in the practice of medicine,
12 including all physician and locum tenens registries or other similar agencies, and to the Chief
13 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
14 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
15 calendar days.

16 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

17 10. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
18 prohibited from supervising physician assistants.

19 11. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
20 governing the practice of medicine in California and remain in full compliance with any court
21 ordered criminal probation, payments, and other orders.

22 12. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
23 under penalty of perjury on forms provided by the Board, stating whether there has been
24 compliance with all the conditions of probation.

25 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
26 of the preceding quarter.

27 13. GENERAL PROBATION REQUIREMENTS.

28 Compliance with Probation Unit

1 Respondent shall comply with the Board's probation unit and all terms and conditions of
2 this Decision.

3 Address Changes

4 Respondent shall, at all times, keep the Board informed of Respondent's business and
5 residence addresses, email address (if available), and telephone number. Changes of such
6 addresses shall be immediately communicated in writing to the Board or its designee. Under no
7 circumstances shall a post office box serve as an address of record, except as allowed by Business
8 and Professions Code section 2021(b).

9 Place of Practice

10 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
11 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
12 facility.

13 License Renewal

14 Respondent shall maintain a current and renewed California physician's and surgeon's
15 license.

16 Travel or Residence Outside California

17 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
18 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
19 (30) calendar days.

20 In the event Respondent should leave the State of California to reside or to practice
21 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
22 departure and return.

23 14. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
24 available in person upon request for interviews either at Respondent's place of business or at the
25 probation unit office, with or without prior notice throughout the term of probation.

26 15. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
27 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
28 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is

1 defined as any period of time Respondent is not practicing medicine in California as defined in
2 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
3 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
4 time spent in an intensive training program which has been approved by the Board or its designee
5 shall not be considered non-practice. Practicing medicine in another state of the United States or
6 Federal jurisdiction while on probation with the medical licensing authority of that state or
7 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
8 not be considered as a period of non-practice.

9 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
10 months, Respondent shall successfully complete a clinical training program that meets the criteria
11 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
12 Disciplinary Guidelines" prior to resuming the practice of medicine.

13 Respondent's period of non-practice while on probation shall not exceed two (2) years.

14 Periods of non-practice will not apply to the reduction of the probationary term.

15 Periods of non-practice will relieve Respondent of the responsibility to comply with the
16 probationary terms and conditions with the exception of this condition and the following terms
17 and conditions of probation: Obey All Laws; and General Probation Requirements.

18 16. COMPLETION OF PROBATION. Respondent shall comply with all financial
19 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
20 completion of probation. Upon successful completion of probation, Respondent's certificate shall
21 be fully restored.

22 17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
23 of probation is a violation of probation. If Respondent violates probation in any respect, the
24 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
25 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
26 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
27 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
28 the matter is final.

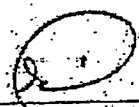
18. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

19. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

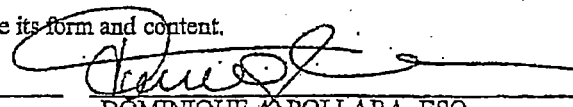
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Dominique A. Pollara, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 2/11/13


MARK CHRISTOPHER DOWLING, M.D.
Respondent

1 I have read and fully discussed with Respondent MARK CHRISTOPHER DOWLING,
2 M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and
3 Disciplinary Order. I approve its form and content.

4 DATED: 2/11/15


DOMINIQUE A. POLLARA, ESQ.
Attorney for Respondent

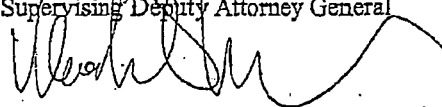
7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Medical Board of California.

10
11 Dated: 2/13/15

Respectfully submitted,

12 KAMALA D. HARRIS
13 Attorney General of California
14 E. A. JONES III
15 Supervising Deputy Attorney General


16 VLADIMIR SHALKEVICH
17 Deputy Attorney General
18 Attorneys for Complainant

19
20 LA2013609558
21 61460272.docx

Exhibit A

Accusation No. 02-2012-228401

1 KAMALA D. HARRIS
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2148
Facsimile: (213) 897-9395
7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 7, 2014
BY: JCE/HALIC ANALYST

8 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation Against:

Case No. 02-2012-228401

12 MARK CHRISTOPHER DOWLING, M.D.
1800 N. California St.
13 Stockton, California 95204

ACCUSATION

14 Physician's and Surgeon's Certificate No.
15 G80355

16 Respondent.

17 Complainant alleges:
18

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
Affairs.

22 2. On or about December 7, 1994, the Medical Board of California issued Physician's
23 and Surgeon's Certificate Number G80355 to MARK CHRISTOPHER DOWLING, M.D.
24 (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times
25 relevant to the charges brought herein and will expire on August 31, 2016, unless renewed.
26

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

6. Code section 822 states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's

1 right to practice his or her profession may be safely reinstated."

2 7. Section 2239 of the Code states:

3 "(a) The use or prescribing for or administering to himself or herself, of any controlled
4 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
5 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
6 any other person or to the public, or to the extent that such use impairs the ability of the licensee
7 to practice medicine safely or more than one misdemeanor or any felony involving the use,
8 consumption, or self-administration of any of the substances referred to in this section, or any
9 combination thereof, constitutes unprofessional conduct. The record of the conviction is
10 conclusive evidence of such unprofessional conduct.

11 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
12 deemed to be a conviction within the meaning of this section. The Division of Medical Quality¹
13 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
14 may order the denial of the license when the time for appeal has elapsed or the judgment of
15 conviction has been affirmed on appeal or when an order granting probation is made suspending
16 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
17 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
18 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
19 information, or indictment."

20 FIRST CAUSE FOR DISCIPLINE

21 (Illness Affecting Competency)

22 8. Respondent is subject to disciplinary action under sections 820 and 822 in that
23 respondent suffers from a mental or physical condition affecting his ability to practice medicine
24 safely. The circumstances are as follows:

25
26 ¹ Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical
28 Practice Act (Bus. & Prof. Code § 2000, et seq.) means the Medical Board of California, and
references to the Division of Medical Quality and Division of Licensing in the Act or any other
provision of law shall be deemed to refer to the Board.

1 9. On or about August 2, 2014, pursuant to Business and Professions Code section 820,
2 Respondent voluntarily submitted to an examination by a board-certified psychiatrist who was
3 retained by the Medical Board of California to conduct a psychiatric evaluation of Respondent.
4 This evaluation was performed after the Medical Board became aware of Respondent's two
5 alcohol related driving arrests within two years of each other. The Board-appointed evaluator
6 concluded that respondent was unable to practice medicine safely unless he is subjected to
7 monitoring, evaluation and treatment.

8 10. On or about October 10, 2014, an Administrative Law Judge of the Medical Hearing
9 Panel issued an Interim Order that suspended Respondent's license, but stayed the suspension on
10 the condition that Respondent undergo monitoring, evaluation and treatment. A true and correct
11 copy of said Interim Order is attached hereto as Exhibit A and is incorporated herein by
12 reference.

13 SECOND CAUSE FOR DISCIPLINE

14 (Use of Medications and/or Alcohol in a Manner Dangerous to Self or Others)

15 11. Respondent is subject to disciplinary action under Code section 2239 in that
16 respondent used controlled substance or dangerous drugs specified in Code Section 4022, or
17 alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the
18 respondent, or to any other person or to the public, or to the extent that such use impairs the
19 ability of the licensee to practice medicine safely. The circumstances are as follows:

20 12. Allegations of paragraphs 9 and 10, together with Exhibit A, are incorporated herein
21 by reference.

22 November 20, 2012, Motor Vehicle Accident Arrest

23 13. On December 13, 2012, a criminal complaint asserting three misdemeanor charges
24 against Respondent was filed in Tuolumne County Superior Court case number CRM40088. The
25 charges are as follows: 1) alleged violation of Vehicle Code section 23153, subdivision (a),
26 driving under the influence of alcohol, with enhancing allegations that Respondent refused or
27 willfully failed to complete a chemical test at officer's request in violation of Vehicle Code
28 section 23577, as well as an enhancement for having suffered a prior alcohol related conviction;

1 2) alleged violation of Vehicle Code section 23153, subdivision (b), driving with blood alcohol
2 level exceeding .08%, with the same enhancing allegations, as well as an allegation that
3 Respondent's blood alcohol level exceeded .15%; 3) alleged violation of Health and Safety Code
4 section 11375, subdivision (b)(2), for possession of a controlled substance.

5 14. Respondent has pled not guilty to these charges, and the criminal matter is pending at
6 this time.

7 15. The circumstances that led to the filing of charges against respondent are as follows:
8 At approximately 9:16 a.m., on the morning of Tuesday, November 20, 2012, Respondent was
9 involved in a solo vehicle traffic accident while travelling southbound near 21160 Bald Mountain
10 Road in Sonora, California. Respondent was on his way to work at the time.

11 16. Prior to the accident, respondent's vehicle was observed swerving into the center of
12 the roadway. Respondent then accelerated around a curve, lost control of his vehicle, and
13 collided with a tree. Following the accident respondent appeared incoherent and a witness, who
14 believed that respondent possibly needed medical attention, drove him home. Thereafter, the
15 witness returned to the scene of the accident and informed responding California Highway Patrol
16 (CHP) Officers, of Respondent's whereabouts and condition.

17 17. CHP officers arrived at Respondent's home and discovered that respondent displayed
18 signs of alcohol intoxication. They also noted numerous medication bottles at his home.

19 18. Respondent later stated that he felt he was not intoxicated when he was driven home
20 after the accident, but that he had consumed a half a bottle of vodka after he got home but before
21 the police arrived. Respondent refused to take part in field sobriety tests. Respondent was
22 arrested on suspicion of driving while impaired. Respondent refused to cooperate with a medical
23 evaluation following his arrest. Respondent's blood, which was drawn following his arrest,
24 contained 0.22% alcohol. At the time of booking at the Tuolumne county jail he was searched,
25 and a 0.5 mg tablet later identified as clonazepam,² was found in his pocket.

26 ² Clonazepam is a benzodiazepine with muscle relaxant, amnestic, sedative, and hypnotic
27 properties. It is a Schedule IV controlled substance under Health and Safety Code section 11057,
28 subdivision (d)(7), and is a dangerous drug pursuant to Business and Professions Code section
4022. At the time, Respondent had a valid prescription for this medication.

1 May 31, 2010 Arrest and Conviction

2 19. On or about October 25, 2010, in the Monterey County Superior Court case number
3 MS286915A, Respondent was convicted, pursuant to a plea of no contest, of a violation of
4 Vehicle Code section 23103.5, alcohol-related reckless driving. Respondent was sentenced to
5 confinement of one day, with credit for one day served, fined and placed on probation for a period
6 of three years. His probationary conditions included a requirement to complete a county
7 approved 12 hour wet reckless program.

8 20. The circumstances of the October 25, 2010, conviction are as follows: On May 31,
9 2010, at approximately 1:00 a.m., CHP Officers observed Respondent driving in the #2 lane of
10 State Route 1 in Monterey, California, at an excessive rate of speed. Respondent had difficulty
11 driving within his lane, and weaved out of his lane and into the lane next to him, as well as the
12 shoulder of the roadway, several times. They stopped Respondent in a parking lot of a local
13 business. When the officers approached Respondent, he stated that he was an unarmed, off-duty
14 doctor and that he was ok to drive. He admitted that he had consumed four alcoholic beverages
15 earlier in the evening. There were two passengers in the vehicle, one of whom was unrestrained
16 and laying in the back-seat.

17 21. Respondent failed to perform field sobriety tests as instructed and demonstrated by
18 the CHP Officers. After the third test, however, Respondent proclaimed that he had performed
19 the FST's to perfection and did not want to perform any more tests, due to his opinion that his
20 blood alcohol level was .04%. Respondent was arrested and his blood was drawn an hour after
21 the stop, and analyzed. Respondent's blood alcohol level was .09% at the time it was drawn.

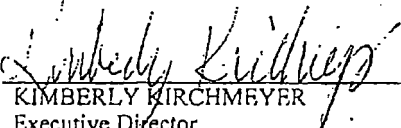
22
23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Medical Board of California issue a decision:

26 1. Revoking or suspending Physician's and Surgeon's Certificate Number G80355,
27 issued to MARK CHRISTOPHER DOWLING, M.D.;

- 1 2. Revoking, suspending or denying approval of MARK CHRISTOPHER DOWLING,
2 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3 3. Ordering MARK CHRISTOPHER DOWLING, M.D. to pay the Medical Board of
4 California the costs of probation monitoring, if placed on probation,; and
5 4. Taking such other and further action as deemed necessary and proper.

6 DATED: November 7, 2014


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

11 LA2013609558

EXHIBIT A

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

KIMBERLY KIRCHMEYER,
Executive Director,
Medical Board of California,

Petitioner,

MARK C DOWLING, M.D.
Physician's and Surgeon's
Certificate No. G80355

Respondent.

Case No. 02-2012-228401

OAH No. 2014100092

[PROPOSED] INTERIM ORDER BY
ADMINISTRATIVE LAW JUDGE
PURSUANT TO PETITION FOR
INTERIM SUSPENSION ORDER

(Government Code section 11529)

The Petition of Kimberly Kirchmeyer, Executive Director of the Medical Board of California, seeking an ex parte interim order suspending Physician and Surgeon's Certificate No. G80355, pursuant to Government Code section 11529, was heard by Coran D. Wong, Administrative Law Judge, Office of Administrative Hearings, on October 10, 2014, in Sacramento, California.

Vladimir Shalkevich, Deputy Attorney General, Health Quality Enforcement Section, represented Kimberly Kirchmeyer (petitioner).

Mark C. Dowling was present and represented by Dominique Pollara,

Based on the Petition for Interim Suspension Order in Case No. 02-2012-228401 and the acknowledgments in the "Stipulation for Interim Order by Administrative Law Judge Pursuant to Ex Parte Petition for Interim Suspension Order" the requirements for the issuance of an interim suspension order set forth in Government Code section 11529, subdivisions (a) and (e), have been met. Accordingly,

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that:

1. The Ex Parte Petition for Interim Suspension Order is granted.
2. Physician and Surgeon's Certificate No. A32530, issued to Respondent Mark C. Dowling, M.D. shall be suspended, but the suspension shall be stayed subject to the following conditions:

A. Within five days of receipt of this Order, Respondent shall enroll in an outpatient alcohol rehabilitation program designed for professionals, and provide written proof of enrollment to the Board or its designee. He shall have a thorough intake substance use evaluation for the program, and immediately thereafter he shall attend this program on an ongoing basis, submit to any substance testing required in the sole discretion of the program and abide by all program recommendations. Selection of the program shall be subject to prior approval of the Medical Board of California or its designee.

B. Within five days of receipt of this Order Respondent shall attend ongoing psychiatric treatment and counseling by a medical provider approved by the Medical Board of California or its designee. Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming attendance and progress.

C. Within five days of receipt of this Order, Respondent's psychotropic medication regimen shall be carefully re-assessed, with due regard given to the opinion of the Medical Board's expert, who stated: "The combination of Wellbutrin and Lexapro, both in high doses, may not be optimal for him, and could increase his anxiety and insomnia, which in turn, might contribute to his substance abuse. The additional sedative-hypnotic agents he is taking may be contributing to his intermittent episodes of confusion. Consideration should be given to use of a more calming antidepressant which might help with his insomnia, in addition to treating his chronic anxiety and dysthymia, and would potentially avert the need for additional sedative/hypnotic medications." Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming reassessment and progress.

D. Within five days of receipt of this Order, Respondent shall discuss with his current treating psychiatrist, discontinuation of Zolpidem (Ambien), to which he had a probable adverse reaction in the past, and may have contributed to his episodic confusional symptoms. Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming reassessment and progress.

E. Within five days of receipt of this Order, Respondent shall be reassessed by a board certified neurologist, previously approved by the Board or its designee, regarding his intermittent episodes of disorientation and abnormal speech. Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming that this assessment took place, and results thereof.

3. This order shall remain in place pending a hearing on an Accusation which is to be filed and served pursuant to Government Code sections 11503 and 11505 within ³⁰ days of the date of this Order. This order shall be dissolved if the Accusation is not served and filed by that date. *we* *asp* *m*

4. Upon service of the Accusation Respondent shall have, in addition to the rights granted by Government Code section 11529, all of the rights and privileges available as specified in the Administrative Procedure Act. If Respondent requests a hearing on the charges, the Division shall provide Respondent with a hearing within 30 days of the request, ^{by} unless Respondent stipulates to a later hearing. The Board shall issue a decision within 15 days of the date the proposed decision is received from the administrative law judge, or the Board shall nullify the interim order previously issued, unless good cause can be shown by the Board for a delay. *we* *asp* *m*

Dated: 10/10/14

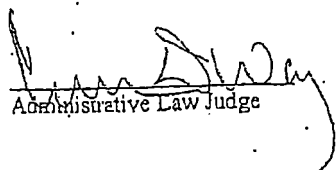

Administrative Law Judge

Exhibit B

**Decision and Order on Petition for Interim Suspension Order
in the Board's case number 800-2018-040659**

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Petition for Interim
Order of Suspension Against:

MARK CHRISTOPHER DOWLING, M.D.,
Physician's and Surgeon's Certificate No.
G80355,

Respondent.

Case No. 800-2018-040659

OAH No. 2018040422

DECISION AND ORDER ON PETITION FOR INTERIM SUSPENSION ORDER

This matter was heard by Administrative Law Judge (ALJ) Tiffany L. King, Office of Administrative Hearings, State of California, on May 9, 2018, in Sacramento, California.

Vladimir Shalkevich, Deputy Attorney General, represented Kimberly Kirchmeyer (petitioner), Executive Director, Medical Board of California (Board).

Mark Dowling, M.D. (respondent) appeared and represented himself.

Pursuant to Government Code section 11529, subdivision (d), testimony, affidavits and other documentary evidence were received, oral and written arguments were presented, the record was closed, and the matter was submitted for decision on May 9, 2018.

FACTUAL FINDINGS

1. Petitioner filed the Petition for Interim Suspension Order (ISO) and all related documents in this matter in her official capacity. On April 18, 2018, the documents were served on respondent, by mail, and in accordance with Government Code section 11529, subdivision (b), by Board Investigator Rebecca Sernett.

2. The Board issued Physician and Surgeon License Number G80355 (license) to respondent on December 7, 1994. The license is scheduled to expire on August 31, 2018, unless renewed.

Procedural History

3. Respondent previously was subjected to an ISO, issued on October 10, 2014, in case number 02-2012-228401, based on findings that respondent suffered from a mental or physical condition which affected his competency, and used dangerous drugs or alcohol in a manner dangerous or injurious to himself or others. The underlying circumstances were that respondent was convicted twice of driving under the influence of alcohol. Effective May 8, 2015, the Board revoked respondent's license, but stayed the revocation and placed his license on probation for five years. As part of his probation, respondent is subject to "random, unannounced, observed, biological fluid testing" at his own expense (Condition No. 3), is required to obey all laws (Condition No. 11), and must comply with all of his probationary terms (Condition No. 17).

4. On July 5, 2016, respondent was issued Citation number 800-2016-023995, for violating Condition No. 3, when he failed to check-in on several occasions with the testing laboratory, First Source Solutions (FSSolutions).¹ The citation imposed a \$350 administrative fine and an order of abatement requiring respondent to maintain compliance with the biological fluid testing condition. Respondent paid the administrative fine.

5. Petitioner now seeks an interim order suspending respondent's license under Government Code section 11529, on the grounds that permitting respondent to engage in the practice of medicine will endanger the public health, safety, and welfare. Specifically, petitioner alleges that, on January 22, 2018, respondent provided a urine sample which tested positive for cocaine metabolite.

Biological Fluid Testing

6. The Board's biological fluid testing program requires a probationer to contract with FSSolutions which will collect random, observed, split biological fluid samples from him and submit those samples for testing. Each day, the probationer is required to contact FSSolutions by a mobile device application or telephone to see if he is required to submit to testing that day. If selected for testing, the probationer must travel to a preselected sample collection location and provide a sample. The sample is then forwarded to Clinical Reference Laboratory (CRL), a certified laboratory in Kansas, for testing.

7. On January 22, 2018, respondent was selected to provide a random, observed, split urine sample to FSSolutions. The urine sample was forwarded to CRL. On January 29, 2018, the Board received the CRL laboratory results which indicated respondent's sample tested positive for cocaine metabolite beyond the cutoff of 300 ng/mL.² The sample was forwarded to Quest Laboratory, a certified laboratory, for confirmatory testing. The results

¹ FSSolutions was formerly known as Recovery Management Services FirstLab, Inc.

² Cocaine is a Schedule II controlled substance under state and federal law. (Health & Saf. Code, § 11055, subd. (b)(6); 21 U.S.C. § 812.)

of the reconfirmation testing were positive for cocaine metabolites. On January 29, 2018, the Board contacted respondent by letter and requested an explanation for the positive test result, to be received no later than January 31, 2018.

8. On January 29, 2018, respondent's positive laboratory results were forwarded to Medical Review Officer (MRO) James Ferguson, M.D. Dr. Ferguson responded the following day, opining that the test results were "consistent with some form of ingestion of cocaine."

9. On January 31, 2018, by email, respondent informed the Board that he was unsure what source caused the positive test result and suggested it may have been something he ate or drank. Respondent requested an MRO review "to help me identify the source so I can avoid it in the future." The Board forwarded respondent's email to Dr. Ferguson for his consideration.

10. In a declaration, dated April 3, 2018, Dr. Ferguson wrote:

It is my opinion that the cocaine metabolite cut off levels utilized by Quest Diagnostics and CRL laboratories in testing of Dr. Dowling's urine are sufficiently high that any cocaine metabolite positive is consistent with use or some form of ingestion of cocaine. None of the medications on the list of Dr. Dowling's medications that [was] provided to me by [the Board] would cause a confirmed positive for cocaine metabolite. There are no naturally occurring foods, other than coca mate tea from South America that cause cocaine positive results. Importation of coca mate tea into the United States is illegal. Cocaine can be administered topically as an anesthetic and that is usually used in ear, nose and throat (ENT) procedures or laceration repair. It is available in a formulation called tetracaine, adrenaline, cocaine (TAC) and is not frequently used. The urine detection period for the cocaine metabolite is approximately 3 days depending on dose and specimen concentration. Dr. Dowling did not report that he consumed coca mate tea, or that he had undergone any medical procedure that utilizes TAC. For that reason, it is my opinion that the positive result showing cocaine metabolites in Dr. Dowling's urine was consistent with the ingestion of cocaine by Dr. Dowling.

11. Respondent was served a copy of Dr. Ferguson's declaration on April 18, 2018, as part of the ISO petition packet.

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Respondent's Testimony

12. Respondent's testimony at hearing is summarized as follows. Respondent denied having ingested cocaine prior to the January 22, 2018 random test. He claimed the Board did not notify him about the positive test for "many weeks," and by that time, he could not recall what he ate for dinner the night before the test. Respondent explained he had tested positive for opiates previously; however, it was determined the sources for the positive results were likely poppy seed bagels which respondent had consumed.

13. After being notified of the positive result for cocaine, respondent consulted with Nazar Alsaffar, M.D., the chairman of the radiology department at Dameron Hospital in Stockton, where respondent works. After speaking with Dr. Alsaffar, respondent believed the source of the cocaine metabolite was an herbal tea he consumed on a regular basis. Respondent did not explain how or on what basis he reached this conclusion, but noted he figured it out within two weeks of being notified of the positive test. Still, he did not contact the Board or FSSolutions to identify the herbal tea as the source for the cocaine metabolites. Rather, he raised the herbal tea defense for the first time at hearing.

14. On cross-examination, respondent could not recall when or from where he purchased the herbal tea, or whether he or his wife had purchased it. He believed he found the tea in a kitchen box of random teas stored in his off-site storage unit. He brought the teas home with him to use when it was cold outside. Respondent did not know how old the tea was, noting the last time he moved was 2013. He did not know if he consumed the tea the night before the positive test.

Discussion

15. A preponderance of the evidence established that respondent tested positive for cocaine metabolites resulting from his use or ingestion of cocaine. Respondent's drug use violated his probation as it is in contravention of state and federal law.

16. Respondent's contention that the positive test result was caused by his consumption of herbal tea was specious and was not supported by any credible evidence. He provided no proof that the herbal tea contained cocaine metabolites. He could not recall when or where he purchased the tea, and his story of finding it by chance while rummaging through his storage unit was implausible. More telling, respondent supposedly discovered the tea as the source for the cocaine metabolite only two weeks after being notified by the Board; yet he took no steps to notify the Board of this discovery. Far more plausible is that respondent read Dr. Ferguson's declaration describing the coca mate tea; from there, he came up with an elaborate story about finding some herbal tea in his storage unit with which he was unfamiliar, consumed it, and was thereby exposed to cocaine metabolites.

17. At hearing, respondent's testimony and behavior were frenetic and disruptive. He made repeated requests to continue the hearing, asserting his laptop was in the repair shop and contained evidence he needed to present his case. When asked to describe this evidence,

he delved into a lengthy explanation that he has missed only a fraction of his mandated daily check-ins over the last three years. On cross-examination, he often refused to answer the questions posed until directed to do so. Respondent's demeanor, taken together with his testimony as a whole, rendered him wholly lacking in credibility.

18. Respondent has a history of substance and alcohol abuse, yet he continues to deny he has a problem. When all the evidence is considered, permitting respondent to continue to practice medicine would endanger the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Government Code section 11529, subdivision (a), provides, in pertinent part, that an interim order suspending a medical license may be issued where it is shown that a licensee "has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practices Act . . . , or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare." Under this section an administrative law judge may also impose conditions upon a medical license including drug testing, supervision of procedures or other license restrictions. Government Code section 11529, subdivision (e), provides that the administrative law judge shall grant the interim order where, in the exercise of discretion, the judge concludes that:

- (1) There is a reasonable probability that the petitioner will prevail in the underlying action.
- (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

2. Business and Professions Code section 2234 provides, in part: "[t]he Board shall take action against any licensee who is charged with unprofessional conduct." Business and Professions Code section 2239, subdivision (a), provides, in part:

The use . . . of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022 . . . to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct

3. Petitioner need only prove her case by a preponderance of the evidence, and this requires a demonstration of a reasonable probability that petitioner will prevail in establishing the violations complained of in seeking the injunction or, in this case, an interim suspension order. (*People v. Frangadakis* (1960) 184 Cal.App.2d 540, 549-50; Bus. & Prof. Code, § 494, subd. (e).) Further, when a governmental entity seeks to enjoin a statutory violation, evidence that it is reasonably probable that the agency will prevail on the merits gives rise to a rebuttable presumption that the potential harm to the public outweighs the potential harm to the defendant. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72-73.)

4. By reason of the matters set forth in Findings 3, 6 through 10, and 15, as well as the declarations filed in support of the petition, respondent violated Business and Professions Code section 2239, subdivision (a). In so doing, respondent also violated Condition No. 11 of his probation, which required he obey all state and federal laws.

5. Petitioner established, by a preponderance of the evidence, that: (1) there is a reasonable probability that petitioner will prevail if an accusation or petition to revoke probation is filed against respondent; and (2) the likelihood of injury to the public in not issuing an ISO outweighs the likelihood of injury to respondent in issuing the order. Permitting respondent to continue to practice medicine would endanger the public health, safety, and welfare. To protect the public health, safety and welfare, respondent's license must be suspended until an accusation or petition to revoke probation is filed and a decision is rendered thereon pursuant to Government Code section 11529, subdivision (f), or this matter is otherwise resolved.

ORDER

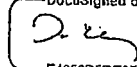
1. The Petition for Interim Suspension Order is GRANTED.
2. Physician and Surgeon License No. G80355 issued to Mark Christopher Dowling, M.D., is SUSPENDED in accordance with Government Code section 11529. Respondent shall be and is immediately hereby restrained and prohibited from:
 - a) Practicing or attempting to practice as, or representing himself to be, a physician and surgeon;
 - b) Possessing, prescribing, dispensing, furnishing, administering or otherwise distributing any controlled substance as defined by Health and Safety Code sections 11150 et seq., or any dangerous drugs as defined by Business and Professions Code section 4022;
 - c) Recommending or approving the use of medical marijuana;
 - d) Possessing or holding his physician's and surgeon's wall and wallet certificates, and all prescription pads and blanks, Drug Enforcement Administration forms, and any and all Drug Enforcement Administration permits, which documents shall

be surrendered by respondent to the Medical Board pending adjudication of this matter.

3. This order shall remain in full force and effect until such time as an accusation and/or petition to revoke probation is filed and served and a decision is rendered thereon in accordance with Government Code section 11529, subdivision (f), or this matter is otherwise resolved. Failure to comply with any of the requirements of Government Code section 11529, subdivision (f), shall nullify the interim suspension order, unless good cause can be shown for the delay.

DATED: May 23, 2018

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TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings